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Eminent Domain: Just Compensation to Include Costs of Removal

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distinguished in that in the *Miller* case the wife accepted a settlement with full knowledge of her husband's extensive property, whereas in the principal case the husband's property holdings and personal wealth greatly increased after the divorce decree was granted. The *Dix* case,¹⁵ also in conflict with the principal case and most decisions under the statute, differs in that the property settlement was not merely an agreement to pay stated sums at certain intervals in lieu of alimony and suit money but, on the contrary, was a property settlement between the parties for other claims. Thus in the instant case the Court must necessarily have construed the property settlement in lieu of alimony and within the terms of the statute, subject to modification upon a proper showing.

The decision of the Court is in accord with the mandate of the Legislature as expressed in the statute, ". . . it shall be the duty of the judges of the circuit courts of this state to construe liberally the provisions hereof."¹⁶

CARL G. SWANSON

EMINENT DOMAIN: JUST COMPENSATION TO INCLUDE COSTS OF REMOVAL

United States v. Westinghouse Electric & Mfg. Co.,
170 F.2d 752 (C. C. A. 1st 1948)

The United States filed condemnation proceedings, under the Second War Powers' Act,¹ for certain property occupied by Westinghouse under a lease expiring in October, 1944. Pursuant to the Court's order, the Federal Government took and retained possession eight months beyond the expiration of the respondent's lease. The District Court awarded West-

¹⁵*Dix v. Dix*, 140 Fla. 91, 191 So. 205 (1939).

¹⁶FLA. STAT. 65.15 (1941).

¹⁵⁶STAT. 176, 177 (1942):

"The Secretary of War . . . may cause proceedings to be instituted in any court having jurisdiction of such proceedings, to acquire by condemnation, any real property, temporary use thereof, or other interest therein . . . Upon or after the filing of the condemnation petition, immediate possession may be taken . . ."

inghouse the costs of removal as part of "just compensation,"² whereupon the Government appealed. *Held*, the damages of the lessee properly included his costs of removal. Judgment affirmed, Chief Justice Magruder dissenting.

When property is taken by eminent domain, the owner is entitled under the Federal Constitution to just compensation.³ Although the Constitution does not define just compensation, it is held to be the market value of the interest as determined by the general demand for the property⁴ at the time of the taking⁵ and not the value to either of the parties.⁶ When the fee simple is taken in federal condemnation proceedings, evidence of damage to the following is rejected: good will and the expense of relocation;⁷ future loss of profits, cost of moving fixtures and personal property, and other consequential losses.⁸

It is immaterial whether a leasehold interest is taken or a tenant's right of occupation is destroyed; compensation must be made.⁹ When the entire interest in a leasehold is condemned, just compensation does not include costs of removal and relocation, since the lessee must vacate at the end of his term in any event.¹⁰ Compensation under these circumstances is the value of the use and occupancy of the leasehold for the remainder

²*United States v. Two Parcels of Land in Springfield*, 71 F. Supp. 1001 (D. Mass. 1947).

³U. S. CONST. AMEND. V.

⁴*Olson v. United States*, 292 U. S. 246 (1934); *City of New York v. Sage*, 239 U. S. 57 (1915); *see United States v. Petty Motor Co.*, 327 U. S. 372, 377 (1946).

⁵*Seaboard A. L. Ry. v. United States*, 261 U. S. 299 (1923); *see Danforth v. United States*, 308 U. S. 271, 283 (1939); *United States v. Klamath and Moadoc Tribes*, 304 U. S. 119, 123 (1938).

⁶*Olson v. United States*, 292 U. S. 246 (1934); *United States v. Chandler-Dunbar Water Power Co.*, 229 U. S. 53 (1913); *see United States v. Petty Motor Co.*, 327 U. S. 372, 377 (1946).

⁷*United States ex rel. TVA v. Powelson*, 319 U. S. 266 (1943); *Mitchell v. United States*, 267 U. S. 341 (1925); *Joslin Mfg. Co. v. Providence*, 262 U. S. 668 (1923); *see United States v. Petty Motor Co.*, 327 U. S. 372, 377 (1946).

⁸*Mullen Benevolent Corp. v. United States*, 290 U. S. 89 (1933); *Bothwell v. United States*, 254 U. S. 231 (1920); *see United States v. General Motors Corp.*, 323 U. S. 373, 379 (1945); ORGEL, VALUATION UNDER EMINENT DOMAIN 220-252.

⁹*United States v. Welch*, 217 U. S. 333 (1910); *United States v. 53¼ Acres of Land in Brooklyn*, 139 F.2d 244 (C. C. A. 2nd 1943), *cert. denied*, 322 U. S. 730 (1944); *United States v. Brewster Aeronautical Corp.*, 60 F. Supp. 314 (D. N. J. 1945); *see Mullen Benevolent Corp. v. United States*, 290 U. S. 89 (1933).

¹⁰*United States v. Petty Motor Co.*, 327 U. S. 372 (1946).

of his term, minus the amount due the lessor.¹¹ Consideration, however, is given to the fact that he may have an option to renew his lease.¹² When only a part of the leasehold rental period is condemned, the courts have allowed the lessee the reasonable costs of preparation of the space for occupancy by the Government, removal of his property and its subsequent return to the premises.¹³ Permitting the latter award is an exception to the general rule, since the remaining interest is of little value to the lessee, who is still obligated under the original lease.¹⁴

The principal case, in holding that only part of the interest had been taken, based its decision upon the conclusion expressed in *United States v. General Motors Corp.*,¹⁵ in which a similar factual situation was involved. In that case the Government condemned one year out of an unexpired term of six years and obtained the power of indefinite extension. Costs of removal were allowed. The principal case differs, however, in that, between the commencement of the proceedings and the date of judgment, the Government had taken the entire interest of the condemnee by exercising the options sought in the proceedings. Hence, all damages due the condemnee were ascertainable at the time of judgment; whereas in the *General Motors* case judgment had been rendered before the expiration of his lease. In the principal case it would seem that the Court of Appeals should not have awarded costs of removal, since the Government had chosen to take the remainder of the condemnee's interest before judgment.¹⁶

The difficulty in cases of this sort is the ascertainment of the condemnee's damages when the Government has taken a portion of the leasehold period, with the power to take the rest at its option. Neither the amount nor its payments need be settled before the Government takes possession of property by eminent domain, since just compensation is insured by a pledge of the public faith and credit.¹⁷ Therefore, such controversies

¹¹*Id.* at 381; *John Hancock Ins. Co. v. United States*, 155 F.2d 977 (C. C. A. 1st 1946), *cert. denied*, 329 U. S. 774 (1946).

¹²*United States v. Petty Motor Co.*, 327 U. S. 372 (1946).

¹³*United States v. General Motors Corp.*, 323 U. S. 373 (1944); *see United States v. Petty Motor Co.*, 327 U. S. 372, 379 (1945).

¹⁴*Ibid.*

¹⁵323 U. S. 373 (1944).

¹⁶*United States v. Petty Motor Co.*, 327 U. S. 372 (1946); *see United States v. Westinghouse*, 170 F.2d 752, (C. C. A. 1st 1948) (dissenting opinion).

¹⁷*Yearsley v. Ross Constr'n Co.*, 309 U. S. 18 (1940); *Hurley v. Kincaid* 285 U. S. 95 (1932); *United States v. McIntosh*, 3 F. Supp. 715 (E. D. Va. 1933); *see Seaboard A. L. Ry.*, 261 U. S. 299, 306 (1923).